

No. 14551-4Lab-71/44529.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of (i) Christian Hospital Jagadhri (District Ambala) (ii) Chairman, Punjab Synod Medical Board, Francis Newton Hospital, Ferozepur (Punjab).

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 182 of 1971

Between

The workman Dr. S. Herbert and the management of (i) Christian Hospital Jagadhri (District Ambala). (ii) Chairman Punjab Synod Medical Board, Francis Newton Hospital, Ferozepur (Punjab).

Present :—Shri G.C. Joshi, for the workman.
[Nemo ; for the management.

AWARD

The following industrial dispute under section 2-A of the Industrial Disputes Act, 1947 between Dr. S. Herbert and the management of (i) Christian Hospital, Jagadhri (District Ambala) (ii) Chairman, Punjab Synod Medical Board, Francis Newton Hospital, Ferozepur (Punjab) has been referred to this Court for adjudication,—*vide* Government Gazette Notification No. ID/UMB/204-A/71 dated the 28th September, 1971.

“Whether the termination of services of Dr. S. Herbert was justified and in order? If not; to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties. Sub-rule (2) of Rule 10-B of the Industrial Disputes (Punjab) Rules, 1958 require that “within two weeks of the receipt of the statement referred to in sub-rule (1) from the Government the opposite party shall file its rejoinder with the Labour Court or Tribunal as the case may be and simultaneously forward a copy thereof to the other party.” The order of reference, shows that its copy was despatched by the Government to the respondent alongwith a copy of the demand notice dated 31st August, 1970 which the workman had given to the management,—*vide* endorsement No. ID/Amb/204-A/71-29615-19 dated 28th September, 1971. Under sub-rule (2) referred to above it was incumbent upon the management to have submitted their rejoinder to this Court within two weeks of the receipt of the order of reference along with a copy of the demand notice. The attention of the management was specifically drawn to this rule in the notice issued to the parties. This notice was despatched on the address given in the order of reference under registered cover acknowledgement due on 4th November, 1971. Dr. P.A. Paul, Chairman, Medical Board, Punjab Synod has submitted a reply to this Court by post in which he had pointed out that the notice had been wrongly addressed to the Chairman, Punjab Synod Medical Board, Francis Newton Hospital, Ferozepur although the Labour Court had been duly informed that Dr. Paul is the Chairman of the managing committee of the Society managing the respondent hospital. There is a mistake of fact in this reply because as already pointed out above the order of reference of this industrial dispute was received by this court only in the beginning of October, 1971 and there could be no occasion for the respondent to inform this Court at any earlier stage as to who was the Chairman of the Managing Committee of the Society managing the respondent hospital and what was his address. This Court issued notice dated the 4th November, 1971 to the parties at the address given in the order of reference. So it is not correct to say that the notice sent by this Court to the management was not correctly addressed.

After drawing the attention of the management to the provisions of sub-rule (2) of rule 10-B of the Industrial Disputes (Punjab) Rules, 1958, the management was directed to file their rejoinder if not already done at a date not later than 15th November, 1971 and to send a copy of the same to the workman who was directed to submit this reply on or before 30th November, 1971. The Chairman has stated in his reply that no statement of claim as referred to in sub-rule (1) has been forwarded to him, and therefore, he was “perplexed” and did not know what he was required to meet on behalf of the Society before this Court. Perhaps the Chairman of the Managing Committee of the respondent hospital had not taken the trouble to read the notice because no statement of claim was even purported to have been sent to him and he was required to file his rejoinder only to the notice of demand which had already been received by him alongwith the order of reference. The Chairman of the Managing Committee also tried to take advantage of the late receipt of the notice and has pointed out that it was physically impossible for him to send his rejoinder before the date fixed by this Court. In the notice issued to the management they were required to attend the Court on 16th December, 1971 at the Canal Rest House, Yamunanagar failing which ex parte proceedings would be taken against them. Nobody cared to attend on behalf of the management on the date fixed. In case the management felt any difficulty and did not know what case they were required to meet or if it was not possible to comply with the directions of this Court because of the late receipt of the notice then their representative could have atleast attended the Court on the date fixed so that he could be informed of the correct legal position and if necessary further opportunity could have given to the management to file their rejoinder as

required by the rules. Neither the Industrial Disputes Act, nor the rules made thereunder make any provision for filing any statement of claim or forwarding the same to the opposite party. Thus there could be no possible justification for the respondent in not attending the Court on the date fixed simply on the pretext that the statement of claim has not been sent to him along with the notice and that he was perplexed and was not aware what case he was required to meet. It was incumbent upon the respondent to have attended the Court on the date fixed and if it was not possible to do so for any sufficient reason then a request for adjournment could have been made. As already pointed out neither any request for adjournment was received nor did any body attend on behalf of the respondent on the date fixed and so there was no alternative but to proceed further with the case in the absence of the respondent.

Shri G.C. Joshi, General Secretary, Indian Trade Union Congress, Haryana appeared on behalf of the workman on the date fixed and at his request the case was adjourned to a next day so that the statement of the workman Dr. S. Herbert could be recorded in support of his case. The management in their reply have pointed out that "the case relates to a Charitable Hospital which is admitted by the opposite party in his suit before the Court and consequently the jurisdiction of the Court, Tribunal and the officers under the Industrial Disputes Act is very seriously disputed". It is also mentioned that "the society has also moved the High Court by a regular Writ to Challenge the reference and restrain all concerned from proceeding against the society." It is not alleged that any application for stay of proceedings have been made in the High Court nor any notice of the Writ or any order of the High Court staying the proceedings have been received. The Court is bound to assume jurisdiction if it is proved that the respondent hospital is not a charitable hospital but is an industry and the applicant Dr. S. Herbert was a workman. Dr. S. Herbert has filed an affidavit in which a number of facts and figures have been given to prove that the respondent society is an industry and that he is a workman. He has alleged out that the respondent hospital receives absolutely no grant or charity and the expenses for running the hospital have to be met from its earning. He has stated that the N.L.Z.P. Mission which started and maintains this hospital and a number of other activities gives only an annual block grant of Rs. 41,000 for the purpose of running the hospital and the nurses school and in his affidavit he has stated that the total annual expenditure for running the hospital normally comes to approximately one lac and the annual earnings from fees charges for food, bed and laboratory tests etc. also come to approximately Rupees one lac. He has affirmed that the annual block grant of Rs. 41,000 which is received from the Mission is wholly utilised in running the nurses school and that the management of the nurses school is entirely separate and independent of management of the hospital. He has pointed out that out of total number of patients treated in the hospital only about 5 per cent of the patients are treated free and the rest have to pay for their treatment as also for their food and lodgings and that the medicines are sold to the patients at a profit of 50 per cent. He has also stated that if in any year the expenditure of the hospital exceeds the income then the deficit is made up from the earning of the following year. In view of these facts it has to be held that the respondent is not a charitable hospital but an industry because all that can be said is that the management have no profit motive as the income and expenditure approximately remains the same. Their Lordships of the Supreme Court in the well known Safdarjang Hospital case reported in 1970-HLJ-226 have observed that "it is not necessary that there must be profit motive but the enterprise must be analogous to trade or business in a commercial sense." It is further observed by their Lordships that "it is an erroneous assumption that an economic activity must be related to capital and profit making alone. An economic activity can exist without the presence of both." In view of these observations of their Lordships of the Supreme Court and the evidence led by the workman I hold that the respondent hospital is an industry.

The next question which requires determination is whether the applicant though holding the post of the Medical Superintendent can be said to be a workman. The applicant in his evidence has stated that after the year 1958 the post of the Medical Superintendent was deprived of all administrative, managerial and supervisory powers. He has stated that though occupying the post of the Medical Superintendent he had no power to appoint or dismiss any employee of the hospital nor could he grant any leave or take any disciplinary action against any employee. The applicant says that he had no power to incur any expenditure and that all these powers vested in the Medical Board and the managing committee and other authority. The applicant has affirmed that there was an Administrator who was getting Rs. 3,000 per month and a Business Manager whose duty it was to look after the administration, accounts, book keeping and collecting funds etc. and that the applicant's whole time was utilised in performing surgical operations and rendering medical aid to the patients which is a technical job. In view of these facts I hold that the applicant was a workman.

The last question which requires determination is whether the services of the applicant have been wrongfully terminated. The copies of the documents filed by the applicant show that there is no order of the management by which his services have been terminated. There is only a resolution of the Punjab Synod Medical Board dated 16th July, 1968 by which the applicant was ordered to be transferred to Philadelphia Hospital, Ambala City as Surgeon on his present salary and free housing. The applicant maintains that this order amounts to the termination of his service but if the management had a right to transfer the applicant from the Christian Hospital Jagadhri to Ambala then it would not be possible to hold that the services of the applicant stood terminated by reason of the order of transfer because the applicant admits that he refused to join duty at Ambala and on this account the management simply treated him as absent from duty. The applicant in his evidence on oath has however stated that at the time of his appointment there was no condition that he would be liable to be transferred to any other hospital. He further says that the management wanted to transfer him to Philadelphia Hospital, Ambala City which is being maintained by another Mission while his appointment was made by the Administrative Council of New Zealand Mission in India that that there is no financial integration of these two hospitals and therefore,

this transfer amounted to termination of his services under the N.Z.P. Mission. It was not denied that the administrative control of both these hospitals rest in the Punjab Synod Medical Board but it was urged that the applicant was an employee of the N.Z.P. Mission and not of the Mission which started and maintains the Philadelphia Ambala Hospital and, therefore, the services of the applicant could not be transferred to another Mission without his consent and he could not be forced to work at Ambala. The applicant says that his protest against the so-called transfer was not heeded and he has been wrongly treated as absent from duty because in fact his services under the N.Z.P. Mission stood terminated by this so called order of transfer. In view of the facts stated by the applicant this stand must also be accepted as correct.

As regards the relief the applicant has submitted that his relations with the management have become very strained. In view of this state of affairs I am of the opinion that it would not be conducive to the harmonious working of the hospital if the applicant is thrust back on a management which does not wish to utilise his service on a post on which he was working from the last 18½ years and compensation for loss of service would meet the ends of justice. No material has been brought on the record to establish victimisation. All that can be said is that the management abolished the post which the applicant was holding and the applicant taking advantage of the terms of his service has refused to accept transfer. The applicant has himself relied upon a position paper which is appendix III and has stated that during the past few years the management abolished certain permanent posts from time to time and the employees so retrenched were given two years salary with dearness allowance and provident fund as service compensation. The learned representative of the applicant during the course of arguments submitted that if the applicant had been treated in the same manner as the other permanent employees who had become surplus he would have no grievance. In view of this submission I am of the opinion that two years service compensation would meet the ends of justice. According to the applicant he was getting a salary of Rs. 1,200 per mensem and two years salary would come to Rs. 28,800. I, therefore, award Rs. 28,800 as compensation for loss of service to the applicant instead of ordering reinstatement.

The applicant has also stated that during his 18½ years service he only took 9 months leave for study and 1½ months leave just before his service was terminated and that he had 8½ months earned leave lying to his credit. I am afraid no relief can be given to the applicant in these proceedings on account of earned leave not availed by him because this relief would not be covered by the terms of reference. I give my award accordingly. There will be no order as to costs.

P.N. THUKRAL,

Dated : 22nd December, 1971.

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 2539, the 23rd December, 1971.

Forwarded in quadruplicate to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 14608-Lab-71/44541.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No.XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/S. Rohtak Gohana Bus Service (P) Ltd., Rohtak.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD.

Reference No. 26 of 1971

Between

SHRI SARDAR SINGH WORKMAN AND THE MANAGEMENT OF M/S ROHTAK
GOHANA BUS SERVICE(P) LTD. ROHTAK.

Present:—Shri S. N. Vats for the workman.

Shri Chanchal Singh for the management.

AWARD

The management of M/s. Rohtak Gohana Bus Service (P) Ltd., Rohtak brought under retrenchment their employee Shri Sardar Singh with effect from 31st October, 1970. This gave rise to an industrial dispute. The Governor of Haryana, in exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to

this Tribunal vide order No. ID/RK/35/10749-53, dated 14th April, 1971 with the following term of reference.

"Whether the retrenchment of Shri Sardar Singh was justified and in order. If not, to what relief is he entitled?"

On receipt of the reference notices were given to the parties and they put in their respective written statements. The management took the plea that the retrenchment of the workman had been brought about as a result of bonafide closure of the business consequent upon the nationalisation of the road transport by the State.

The case was fixed for the evidence of the management. No proceedings are however, called for in the case as the parties have entered into an amicable settlement. The workman has withdrawn his claim for reinstatement as well as back wages and requested for a no dispute award. Statements of the parties have been recorded.

In view of the above, a no dispute award is given without any order as to costs.

Dated the 21st December, 1971

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

No. 1531 the 22nd December, 1971

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 21st December, 1971

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 3rd January, 1972

No. 14607-4Lab-71/102.—In pursuance of the provisions of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workman and the management of M/s Rohtak Gohana Bus Service (P) Ltd; Rohtak.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 27 of 1971

Between

SHRI RAMJI DASS WORKMAN AND THE MANAGEMENT OF M/S ROHTAK GOHANA
BUS SERVICE (P) LTD; ROHTAK

Present.—

Shri S. N. Vats, for the workman.

Shri Chanchal Singh, for the management.

AWARD

The management of M/s Rohtak Gohana Bus Service (P) Ltd; Rohtak brought under retrenchment their employee Shri Ramji Dass with effect from 31st October, 1970. This gave rise to an industrial dispute. The Governor of Haryana, in exercise of the powers conferred by clause (d) of sub section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal,—vide order No. ID/RK/10779-83, dated 14th April, 1971 with the following term of reference:—

Whether the retrenchment of Shri Ramji Dass, was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference notices were given to the parties and they put in their written statements. The management took the plea that the retrenchment of the workman had been brought about as a result of bonafide closure of the business consequent upon the nationalisation of the road transport by the State.

The case was fixed for the evidence of the management. No proceedings are, however called for in the case as the parties have entered into an amicable settlement. The workman has withdrawn his claim for reinstatement as well as back wages and requested for a no dispute award. Statements of the parties have been recorded.

In view of the above, a no dispute award is given without any order as to costs.

Dated 21st December, 1971.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1532, dated 22nd December, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated 21st December, 1971

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 14656-4Lab-71/108.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Rohtak-Gohana Bus Service (P) Ltd, Rohtak.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA FARIDABAD

Reference No. 35 of 1971

Between

SHRI TARA CHAND WORKMAN AND THE MANAGEMENT OF M/S
ROHTAK-GOHANA BUS SERVICE (P) Ltd; ROHTAK

Present :—

Shri S. N. Vats, for the workman.

Shri Chanchal Singh, for the management.

AWARD

The management of M/s Rohtak-Gohana Bus Service (P) Ltd; Rohtak brought under retrenchment their employee Shri Tara Chand with effect from 31st October, 1970. This gave rise to an industrial dispute. The Governor of Haryana, in exercise of the powers conferred by clause (d) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal,—*vide* order No. ID/RK/35/10869-73, dated 14th April, 1971 with the following term of reference.

“Whether the retrenchment of Shri Tara Chand was justified and in order. If not, to what relief is he entitled?”

On receipt of the reference notices were given to the parties and they put in their respective written statements. The management took the plea that the retrenchment of the workman had been brought about as a result of bona fide closure of the business consequent upon the nationalisation of the road transport by the State.

The case was fixed for the evidence of the management. No proceedings are, however called for in the case as the parties have entered into an amicable settlement. The workman has withdrawn his claim for reinstatement as well as back wages and requested for a no dispute award. Statements of the parties have been recorded.

In view of the above, a no dispute award is given without any other as to costs.

Dated the 21st December, 1971

O. P. SHARMA
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1537, dated the 22nd December, 1971.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA

Dated the 21st December, 1971

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 14597-4 Lab/71/110.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between workmen and the management of M/s Rohtak Gohana Bus Service Pvt., Ltd., Rohtak.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 33 of 1971

Between

SHRI KRISHAN LAL WORKMAN AND THE MANAGEMENT OF M/S ROHTAK GOHANA
BUS SERVICE (P) LIMITED, ROHTAK

Present :

Shri S. N. Vats for the workman.

Shri Chanchal Singh, for the management.

AWARD

The management of M/s Rohtak Gohana Bus Service (P) Ltd; Rohtak brought under retrenchment their employee Shri Krishan Lal with effect from 31st October, 1970. This gave rise to an industrial dispute. The Governor of Haryana, in exercise of the powers conferred by clause (d) of section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal vide,—order No. ID/RK/35/10833-37, dated the 14th April, 1971 with the following term of reference.

Whether the retrenchment of Shri Krishan Lal was justified and in order? If not, to what relief is he entitled?

On receipt of the reference notices were given to the parties and they put in their respective written statements. The management took the plea that the retrenchment of the workman had been brought about as a result of bonafide closure of the business consequent upon the nationalisation of the road transport by the State.

The case was fixed for the evidence of the management. No proceedings are, however, called for in the case as the parties have entered into an amicable settlement. The workman has withdrawn his claim for reinstatement as well as back wages and requested for a no dispute award. Statements of the parties have been recorded.

In view of the above, a no dispute award is given without any order as to costs.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1536, dated the 22nd December, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 21st December, 1971